

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DENNIS COOK,

Plaintiff

v.

C-1-02-73

THE CITY OF NORWOOD,
KEVIN CROSS, GARY HUBBARD,
JOSEPH HOCHBEIN,

Defendants

SPECIAL VERDICTS

We, the jury, unanimously determine our Special Verdicts as follows:

- 1) Did plaintiff prove by a preponderance of the legal evidence that one or more of the defendants intentionally discriminated against him because they perceived or regarded him as disabled?

City of Norwood	YES _____	NO <u>✓</u>
Kevin Cross	YES _____	NO <u>✓</u>
Gary Hubbard	YES _____	NO <u>✓</u>
Joseph Hochbein	YES _____	NO <u>✓</u>

- 2) If you answered "Yes" to Special Verdict # 1, did plaintiff prove by a preponderance of the legal evidence that any defendant committed the intentional discrimination on or after August 20, 1997?

City of Norwood	YES _____	NO _____
Kevin Cross	YES _____	NO _____
Gary Hubbard	YES _____	NO _____
Joseph Hochbein	YES _____	NO _____

- 3) If you answered "Yes" to Special Verdict # 1, did plaintiff prove by a preponderance of the legal evidence that any defendant committed the intentional discrimination on or after February 1, 2000?

City of Norwood	YES _____	NO _____
Kevin Cross	YES _____	NO _____
Gary Hubbard	YES _____	NO _____
Joseph Hochbein	YES _____	NO _____

- 4) Did plaintiff prove by a preponderance of the legal evidence that one or more of the defendants retaliated against him for engaging in activity protected by the Americans With Disability Act?

City of Norwood	YES <u>✓</u>	NO _____
Kevin Cross	YES <u>✓</u>	NO _____
Gary Hubbard	YES <u>✓</u>	NO _____
Joseph Hochbein	YES <u>✓</u>	NO _____

- 5) If you answered "Yes" to Special Verdict # 4, did plaintiff prove by a preponderance of the legal evidence that any defendant retaliated against him on or after August 20, 1997 for activity protected by the Americans With Disability Act?

City of Norwood	YES <u>✓</u>	NO _____
Kevin Cross	YES <u>✓</u>	NO _____
Gary Hubbard	YES <u>✓</u>	NO _____
Joseph Hochbein	YES <u>✓</u>	NO _____

- 6) If you answered "Yes" to Special Verdict # 4, did plaintiff prove by a preponderance of the legal evidence that any defendant retaliated against him on or after February 1, 2000 for activity protected by the Americans With Disability Act?

City of Norwood	YES _____	NO <u>✓</u> _____
Kevin Cross	YES _____	NO <u>✓</u> _____
Gary Hubbard	YES _____	NO <u>✓</u> _____
Joseph Hochbein	YES _____	NO <u>✓</u> _____

- 7) Did plaintiff prove by a preponderance of the legal evidence that one or more of the individual defendants acted with malicious purpose or in a wanton and reckless manner?

Kevin Cross	YES <u>✓</u> _____	NO _____
Gary Hubbard	YES <u>✓</u> _____	NO _____
Joseph Hochbein	YES _____	NO <u>✓</u> _____

- 8) Did plaintiff prove by a preponderance of the legal evidence that one or more of the individual defendants took an adverse employment action against him while acting within the scope of his employment with the City of Norwood?

Kevin Cross	YES <u>✓</u> _____	NO _____
Gary Hubbard	YES <u>✓</u> _____	NO _____
Joseph Hochbein	YES <u>✓</u> _____	NO _____

- 9) Did defendants state a legitimate nondiscriminatory reason for any adverse employment action taken with respect to plaintiff?

YES ✓ _____ NO _____

If you answered "Yes" to Special Verdict # 9, proceed to Special Verdict # 10. If you answered "No", proceed to Special Verdict # 11.

- 10) Did plaintiff prove by a preponderance of the legal evidence that defendants' stated reasons for the adverse employment action taken with respect to plaintiff were pretextual?

YES ✓ _____ NO _____

11) Did plaintiff prove by a preponderance of the legal evidence he could perform the essential functions of his job?

a) as leadman

YES ✓ NO

b) as sweeper II operator

YES ✓ NO

c) as a laborer

YES ✓ NO

12) What amount of damages, if any, did plaintiff prove by a preponderance of the legal evidence were directly caused by defendants' intentional disability discrimination and/or defendants' retaliation against plaintiff?

Back pay	\$ <u>0</u>
Front pay	\$ <u>250,000</u>
Other compensatory damages	\$ <u>0</u>

13) Did defendants prove by a preponderance of the legal evidence that plaintiff failed to mitigate his damages?

YES ✓ NO

- 14) If you answered "Yes" to Special Verdict No. 13, what is the amount defendants proved by a preponderance of the legal evidence should be deducted from plaintiff's damages because of plaintiff's failure to mitigate his damages?

\$ 50,000

- 15) Did plaintiff prove by clear and convincing evidence that one or more of the individual defendants acted with actual malice or with reckless indifference to plaintiff's known rights?

Kevin Cross	YES <u>✓</u>	NO <u> </u>
Gary Hubbard	YES <u>✓</u>	NO <u> </u>
Joseph Hochbein	YES <u> </u>	NO <u>✓</u>

- 16) If you answered "Yes" to Special Verdict No. 15, what amount of money, if any, do you award to plaintiff as punitive damages against the individual defendant(s) who acted with actual malice or reckless indifference to plaintiff's known rights?

Kevin Cross	\$ <u>10,000</u>
Gary Hubbard	\$ <u>30,000</u>
Joseph Hochbein	\$ <u> </u>

Walter K. Pearce

Nancy K. Burden

Lush Fede

12/1/04
Date

Brian K. Meeks
Deborah L. Jeger
Linda Stagg